

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IBA, LLC, a Delaware limited liability company,

Plaintiff,

v.

GANESAN VISVABHARATHY, an individual

Defendant.

No. 07 C 6219

Judge Wayne R. Andersen

MOTION TO SET ASIDE DEFAULT JUDGMENT AND QUASH SERVICE

Defendant, Ganesan Visvabharathy, pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure, moves for an Order setting aside the default judgment entered in this matter and quashing the substituted service allegedly made by plaintiff, IBA, LLC (“IBA”) on him. In support of his motion, Dr. Visvabharathy submits the accompanying Memorandum in Support, with exhibits, and states as follows:

1. The judgment entered by the Court on February 5, 2008 was based on IBA's assertion that Dr. Viswabharathy failed to respond to a properly-served complaint and summons.
2. In truth, IBA never effectively served Dr. Viswabharathy, because it attempted substituted service at a location that had not been Dr. Viswabharathy's abode for at least a year and a half.
3. Absent effective service, the default judgment obtained by IBA is void, and is properly set aside on a Rule 60(b)(4) motion. *Gold Kist, Inc. v. Laurinburg Oil Co.*, 756 F.2d 14, 19 (3d Cir. 1985) ("A default judgment entered when there has been no proper service of the complaint is, *a fortiori*, void, and should be set aside."). The Court should also quash the ineffective service.

WHEREFORE, for the above reasons and those set forth in the accompanying Memorandum in Support, defendant Ganesan Visvabharathy respectfully requests that this Court enter an Order setting aside its February 5, 2008 judgment, quashing service, and awarding such other and further relief as the Court deems proper.

Dated: February 14, 2008

Respectfully submitted,

GANESAN VISVABHARATHY

By: s/ Daniel A. Shmikler
One of his attorneys

Bruce S. Sperling
Daniel A. Shmikler
SPERLING & SLATER, P.C.
55 West Monroe Street, Suite 3200
Chicago, Illinois 60603
(312) 641-3200
(312) 641-6492 (fax)

CERTIFICATE OF SERVICE

I, Daniel Shmikler, an attorney, hereby certify that on February 14, 2008, I electronically filed **Defendant's Motion To Set Aside Default Judgment And Quash Service** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following persons listed below:

Gary I. Blackman, Esq.
James G. Martignon, Esq.
Levenfeld Pearlstein, P.C.
2 North LaSalle Street
Suite 1300
Chicago, Illinois 60602

/s/ Daniel A. Shmikler
Daniel A. Shmikler